

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 April 2024

Public Authority: Royal Borough of Greenwich
Address: The Woolwich Centre
35 Wellington Street
Woolwich
SE18 6HQ

Decision (including any steps ordered)

1. The complainant has requested information about correspondence he has not received. Royal Borough of Greenwich ("the public authority") maintains it does not hold the requested information.
2. The Commissioner's decision is that some requested information was a request for the complainant's personal data and therefore is exempt information under section 40(5A) of FOIA. The Commissioner further found that the public authority did not hold the rest of the requested information.
3. The Commissioner does not require steps to be taken.

Request and response

4. On 6 August 2023, the complainant wrote to the public authority and requested information in the following terms:
 - I would like to know what investigation had taken place into why there was some alleged anomaly as to why I didn't receive my correspondence during the agreed time.
 - Has this issue happened before and what was the outcome?
 - Was there some sort of outage that impacted all of Greenwich regarding sending and receiving emails, I understand that the

ICO was also met with a wall of silence until the case was going to be escalated

- Can I ask why there wasn't a delivery/read receipt attached to the submission, at the very least provide me with a hard copy of my request. In the past, your lawyer has done so relating to me..."
5. On 1 September 2023, the public authority responded and said (in italics) as follows.

" would like to know what investigation had taken place into why there was some alleged anomaly as to why I didn't receive my correspondence during the agreed time.

"It was believed that all the information was provided within the statutory time of 20 working days".

Has this issue happened before and what was the outcome?

This information is not recorded.

Was there some sort of outage that impacted all of Greenwich regarding sending and receiving emails, I understand that the ICO was also met with a wall of silence until the case was going to be escalated.

No

Can I ask why there wasn't a delivery/read receipt attached to the submission, at the very least provide me with a hard copy of my request. In the past, your lawyer has done so relating to me.

We do not ask for delivery/read receipts".

6. The complainant requested an internal review. The public authority sent him the outcome of its internal review on 20 September 2023. It upheld its original position.

Scope of the case

7. The complainant contacted the Commissioner on 27 September 2023 to complain about the way his request for information had been handled.
8. The Commissioner considers that the scope of his investigation is to determine whether the public authority handled this matter in accordance with FOIA.

Reasons for decision

Section 40(5A) – personal information

9. Under section 1(1) of the FOIA, public authorities have a duty to confirm or deny whether requested information is held and, where it is, to provide it to a requester.
10. Section 40(5A) of FOIA states that “the duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority would be)” the requester’s own personal data.
11. The Commissioner (for reasons that follow) finds the following parts of the request to be requests for the complainant’s own personal data and therefore exempt information under section 40(5A) of FOIA.
 - “I would like to know what investigation had taken place into why there was some alleged anomaly as to why I didn't receive my correspondence during the agreed time”.

And

- “Can I ask why there wasn't a delivery/read receipt attached to the submission, at the very least provide me with a hard copy of my request. In the past, your lawyer has done so relating to me”.
12. Section 3(2) of the Data Protection Act 2018 (DPA) defines personal data as: “any information relating to an identified or identifiable living individual”.
 13. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
 14. Here the complainant is seeking information regarding an investigation as to why he did not receive his correspondence during an agreed time, the absence of a delivery/read receipt, and a hard copy of his previous request. This is clearly requested information pertaining to himself. If held it would therefore be the complainant’s own personal data and therefore is exempt from the public authority’s duty to confirm or deny whether requested information is held information by virtue of section 40(5A).
 15. Section 40(5A) is an absolute exemption and there is no requirement for the Commissioner to consider the public interest.

Section 1 – Information held

16. The Commissioner next considers the rest of the requested information.

17. Where there is some dispute between the amount of information identified by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions must decide whether, on the civil standard of the balance of probabilities, the public authority holds any information which falls within the scope of the request (or was held at the time of the request).
18. In order to determine this matter, the Commissioner asked a series of questions of the public authority regarding whether it held requested information. The questions and answers thereto are replicated below.

Q. What searches have been carried out to check no information was held within the scope of the request and why would these searches have been likely to retrieve any relevant information?

The question that the complainant is asking relates to the circumstances of the response to the complainant's previous request. When providing this response, the Council sent the response to the complainant on time, although it appears that the complainant did not receive the emails (following a further email from the complainant, the email was resent to the complainant). No bounce back or error message was received from the complainant email service that would suggest that the emails were not received, and the complainant did not provide an alternative address (either email or physical address) with his request.

As the Council has received no information suggesting that there is a fault with its systems, and the only information suggesting that there was a fault was from the complainant, we do not hold any information suggesting that there was a fault affecting this correspondence.

Q. Please describe thoroughly any searches of relevant paper/electronic records and include details of any staff consultations.

Records from the time of the complainant's requests have been checked, and show that emails were sent to the complainant. No complaints were received relating to issues similar to the complainant's and staff working in the FOI team and elsewhere within the Council do not have any recollection of this issue being raised contemporaneously, or of reports of an issue with the Council's email system at either time. As the Council is not responsible for the complainant's personal email account and that information about the operation of this account would be held by the company providing this service to the complainant, the Council is not able to conclusively state the cause of the complainant's non-receipt of this correspondence.

Q. If searches included electronic data, which search terms were used and please explain whether the search included information held locally

on personal computers used by key officials (including laptop computers) and on networked resources and emails.

Checks were carried out with relevant staff, who did not recall any complaints being received at the time of the issue, and documents held in respect of the complainant's emails showing that they had been sent to the complainant when the Council stated that they had have been previously provided to the complainant. The complainant's Internal Review is the only one relating to non-receipt of a response issued by email in the period relating to the complainant's original request.

Q. If no or inadequate searches were done at the time, please rectify this now and let me know what you have done.

Not applicable

Q. If the information were held, would it be held as manual or electronic records?

Electronic

Q. Was any recorded information ever held relevant to the scope of the complainant's request but deleted/destroyed?

No

Q. If recorded information was held but is no longer held, when did the public authority cease to retain this information?

Not Applicable

Q. Does the public authority have a record of the document's destruction?

Not Applicable

Q. What does the public authority formal records management policy say about the retention and deletion of records of this type? If there is no relevant policy, can you describe the way in which it has handled comparable records of a similar age?

Not Applicable, although records relating to complaints, FOI requests and Internal Reviews are held for a period of six years from the last contact with the requester.

Q. If the information is electronic data which has been deleted, might copies have been made and held in other locations?

Not Applicable

19. On consideration of the searches carried out, the explanations provided and in the absence of evidence to the contrary, the Commissioner is satisfied, on the balance of probabilities, that the public authority conducted appropriate searches. He is not aware of what further searches could have been reasonably undertaken. It is for these reasons that the Commissioner considers, on the balance probabilities, that it does not hold the relevant information falling within the scope of the request excluding any section 40 material.

Other matters

20. It is an organisation's, not an individual's, responsibility to recognise the most appropriate access regime upon receiving an information request. When an individual is requesting access to their own personal data, the appropriate regime is that of subject access rather than freedom of information.
21. The Commissioner has not been provided with any evidence to state whether the requested information to which section 40(5A) applies has been addressed under the DPA as part of any subject access consideration, and the public authority's decision in that respect communicated to the complainant. If it has not, the Commissioner advises that the public authority considers the potential access to these parts of the request under the DPA and provide a response to the complainant accordingly.

Right of appeal

22. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

23. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
24. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Richard Lawanson
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF